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DEPARTMENT OF THE INTERIOR

Mining Enforcement and Safety Administration

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MINE HEALTH AND SAFETY

Memorandum of Understanding Between MESA and OSHA

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The Occupational Safety and Health Administration (OSHA) and the Mining Enforcement and Safety Administration (MESA) entered into an agreement on April 22, 1974, which clarifies the authority of each agency regarding areas of employee safety and health, and provides a procedure to coordinate and adopt safety standards promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970, P.L. 91-596 (Occupational Act) which have significant application to working conditions in mines subject to the Federal Metal and Nonmetallic Mine Safety Act, P.L. 89-577 (Metal Act). The purpose of this agreement is to strengthen the effective enforcement of health and safety standards by MESA under the Metal Act, and OSHA under the Occupational Act.

The agreement lists and defines mining and milling processes for which MESA has authority to enforce health and safety including milling processes such as crushing, grinding, concentrating, pelletizing, sintering, calcining, kiln treatment, retorting, leaching, and briquetting. The agreement describes the types of operations beyond milling which may be on or contiguous to mining and/or milling operations such as gypsum board, brick, ceramic, cement plants, and smelting, electrowinning and refining for which OSHA has authority.

Another provision of the agreement provides that within six months after April 22, 1974, the Secretary of the Interior, after consultation with the Secretary of Labor, shall determine which standards promulgated under the Occupational Act may have significant application to working conditions in mines subject to the Metal Act and are not covered by mandatory standards promulgated under the Metal Act. The Secretary of the Interior shall then propose the adoption, modification or revision of such standards in accordance with section 6 of the Metal Act. Also, the Secretary of Labor shall consult with the Secretary of the Interior prior to proposing future safety standards under the Occupational Act which may have significant application to working conditions in mines subject to the Metal Act. After such standards are promulgated by the Secretary of Labor, the Secretary of the Interior shall propose the adoption, modification or revision of such standards under the Metal Act.

The memorandum of understanding is set forth below.

JAMES M. DAY,
Administrator, Mining Enforcement and Safety Administration.

JULY 22, 1974.

MEMORANDUM OF UNDERSTANDING BETWEEN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR AND THE MINING ENFORCEMENT AND SAFETY ADMINISTRATION, U.S. DEPARTMENT OF THE INTERIOR

The Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, and the Mining Enforcement and Safety Administration (MESA), U.S. Department of the Interior, enter into this agreement to (1) clarify the authority of each agency regarding areas of employee safety and health, and (2) to provide a procedure to coordinate and adopt safety standards promulgated under the Occupational Safety and Health Act of 1970 which have significant application to working conditions in mines subject to the Federal Metal and Nonmetallic Mine Safety Act of 1966.

A. BACKGROUND

1. The Federal Metal and Nonmetallic Mine Safety Act (the Metal Act) authorizes the Secretary of the Interior to promulgate and enforce safety and health standards regarding working conditions of employees engaged in underground and surface mineral extraction (mining) and preparation and milling of the minerals extracted.

2. The Occupational Safety and Health Act of 1970 (the Occupational Act) gives the Secretary of Labor authority over all working conditions of employers engaged in business affecting commerce except those conditions with respect to which other Federal agencies exercise statutory authority to prescribe or enforce regulations affecting occupational safety or health.

B. CLARIFICATION OF AUTHORITY

1. MESA has enforcement authority for employee safety and health in mines and mills. OSHA has safety and health enforcement authority in processes beyond mines and mills.

2. Appendix A provides more detailed descriptions of the kinds of operations included in mining and milling and the kinds of operations beyond milling over which OSHA has full authority.

3. Notwithstanding the clarification of authority provided by Appendix A, there will remain areas of uncertainty regarding the statutory authority of each agency, especially in operations near the termination of the milling cycle and the beginning of the manufacturing cycle.

Where, after referring to Appendix A, it is uncertain whether a working condition is within the milling process or beyond, MESA will determine where milling ends, thereby providing OSHA with a definition of the beginning of its worker coverage.

C. PROCEDURAL AGREEMENT

1. When OSHA receives information suggesting unsafe or unhealthful working conditions in an area for which MESA has authority for employee safety and health, OSHA will forward that information to MESA for appropriate disposition.

2. When MESA receives information suggesting unsafe or unhealthful working conditions in an area for which OSHA has authority for employee safety and health, MESA will forward that information to OSHA for appropriate disposition.

3. If it is unclear after reference to Appendix A and section B of this agreement whether enforcement authority over certain working conditions resides with MESA or OSHA, the Office of the Associate Solicitor for Mine Health and Safety, Department of the Interior, will meet with the Associate Solicitor for Occupational Safety and Health, Department of Labor, and jointly resolve the issues. If they are unable to reach a resolution, they will refer the matter to the Deputy Assistant Secretary of Labor for Occupational Safety and Health, and the Administrator, MESA.

D. COORDINATION OF MESA AND OSHA SAFETY STANDARDS

1. (a) Within six months from the effective date of this agreement, the Secretary of Interior, after consultation with the Secretary of Labor, shall determine which standards promulgated under the Occupational Act, which are in effect on the effective date of this agreement, may have significant application to working conditions in mines subject to the Metal Act and are not covered by mandatory standards promulgated by the Secretary of the Interior under the Metal Act.

(b) Such standards shall cover only those working conditions in mines subject to the Metal Act for which the Secretary of the Interior has not promulgated mandatory safety standards.

(c) After such determination, the Secretary of the Interior, in accordance with section 6 of the Metal Act, shall publish in the FEDERAL REGISTER:

(1) Those safety standards which he proposes to adopt without change;

(2) Those safety standards which he proposes to adopt with modification or revision because specific conditions associated with the mining industry warrant such modification or revision. The Secretary of the Interior shall set forth the reasons for the modification or revision and shall also publish the text of the proposed modified or revised standard.

2. After the effective date of this agreement, the Secretary of Labor shall consult with the Secretary of the Interior prior to proposing safety standards under the Occupational Act which may have significant application to working conditions in mines subject to the Metal Act and shall afford the Secretary of the Interior reasonable time to comment on such standards.

After the Secretary of Labor promulgates safety standards which may have significant application to working conditions in mines subject to the Metal Act, the Secretary of the Interior shall, in accordance with section 6 of the Metal Act, publish those safety standards which he proposes to adopt without change, or adopt with modification or revision, in accordance with the procedures in paragraph D(1) above.

3. Nothing contained in this agreement shall restrict or supersede the authority of the Secretary of the Interior to enforce or promulgate safety standards pursuant to the Metal Act, or to amend, modify, or revoke any safety standard adopted or promulgated pursuant to the Metal Act, nor shall anything in this agreement be construed as affecting any provision of the Occupational Act.

Dated: April 22, 1974.

JAMES M. DAY,
Administrator, Mining Enforcement and Safety Administration, Department of the Interior.

Dated: April 18, 1974.

WILLIAM A. VOGELY,
Acting Deputy Assistant Secretary—Energy and Minerals, Department of the Interior.

Dated: April 22, 1974.

HOWARD J. SCHULTE,
Deputy Assistant Secretary for Occupational Safety and Health, Department of Labor.

APPENDIX A—MINING AND MILLING OPERATIONS UNDER AUTHORITY OF MESA TO ENLARGE COMPLIANCE WITH PROMULGATED HEALTH AND SAFETY STANDARDS

GENERAL AUTHORITY—MESA/OSHA

Section 2(b) of the Metal Act defines "mines" covered by the Act to include not only mineral extraction (mining) operations, but also milling and preparation facilities and other surface facilities used in mining or milling.

MESA interprets its authority to include the prescription and enforcement of standards regarding occupational safety and health conditions of miners who work at loading, dumping, or preparation milling facilities remote from the mine area but used in the milling or preparation of extracted minerals.

MESA also interprets its authority to include working conditions of such operations, including such other surface facilities as may be used in the extraction or preparation of extracted minerals. Such other surface facilities may include: electrical or mechanical shop, power plant, acid plant, chemical laboratory, warehouse, lumber preparation, treating plant, paint shop, general office heating plant, loading docks, and transportation.

To clarify the areas of authority of MESA, this Appendix sets forth in more detail mining operations and the kinds of operations that constitute milling over which MESA has statutory authority to enforce its regulations affecting occupational safety and health.

Processes beyond milling are under the full employee safety and health authority of OSHA. They are also set forth in this Appendix.

DEFINITIONS: MINING AND MILLING

Mining has been defined as the science, technique, and business of mineral discovery and exploitation. It entails such work as directed to the severance of minerals from the natural deposits by methods of underground excavations, opencast work, quarrying, hydraulicking and alluvial dredging. Minerals so excavated usually require upgrading processes to effect a separation of the valuable minerals from the gangue constituents of the material mined. This latter process is usually termed "milling" and is made up of numerous procedures which are accomplished with and through many types of equipment and techniques.

Milling is the art of treating the crude crust of the earth to produce therefrom the primary consumer derivatives. The essential operation in all such processes is separation of one or more valuable desired constituents of the crude from the undesired contaminants with which it is associated.

A CRUDE is any mixture of minerals in the form in which it occurs in the earth's crust. An ORE is a solid crude containing valuable constituents in such amounts as to constitute a promise of possible profit in extraction, treatment, and sale. The valuable constituents of an ore are ordinarily called VALUABLE MINERALS, or often just MINERALS; the associated worthless material is called GANGUE.

In some ores the mineral is in the chemical state in which it is desired by primary consumers, e.g., graphite, sulphur, asbestos, talc, garnet. In fact, this is true of the majority of nonmetallic minerals. In metallic ores, however, the valuable minerals in their natural state are rarely the product desired by the consumer, and chemical treatment of such minerals is a necessary step in the process of beneficiation. The end products are usually the result of concentration by the methods of ore dressing (milling) followed by further concentration through metallurgical processes. The valuable product of the ore dressing treatment is called CONCENTRATE; the discarded waste is TAILING.[1]

MINING—MESA

Following is a list indicating mining operations and minerals for which MESA has authority to regulate.

Mining Operations

Underground mining
Open pit mining
Quarrying
Solution mining (Precipitate & Leaching)

Dredging—When the primary purpose of the dredging operation is to recover metal or nonmetallic minerals for milling and/or sale or use.

Hydraulicking
Wells
Ponds—brine evaporation
Auger Mining

Minerals

Coal

Metals: (Including but not limited to)

Antimony	Mercury
Bauxite	Molybdenum
Beryl	Nickel
Bismuth	Rare Earths
Chrome	Silver
Cobalt	Titanium
Copper	Tungsten
Gold	Uranium
Iron	Vanadium
Lead	Zinc
Manganese	Zirconium

Nonmetals

Abrasives	Diatomite
Aplite	Feldspar
Asbestos	Fluorspar
Barite	Gilsonite
Boron	Graphite
Bromine	Gypsum
Calcium Chloride	Kyanite
Clay	Magnesite
Mica	Salt
Mineral Pigments	Shale
Oil Shale	Sodium Compounds
Peat	Sulfur
Perlite	Talc, Soapstone, and Pyrophyllite
Potash	Vermiculite
Pumice	Wollastonite
Potash Rock	

Subgroups of Nonmetals (Sand and Gravel, and Crushed and Dimension Stone Industries)

Sand	Native Asphalt (impregnated stone & sand)
Gravel	Quartzite
Cement	Schist
Gabbro	Slate
Gneiss	Taprock or Diabase
Lime	
Limestone	
Marble	

MILLING—MESA AUTHORITY

Following is a list with general definitions of milling processes for which MESA has authority to regulate. Milling consists of one or more of the following processes: crushing, grinding, pulverizing, sizing, concentrating, washing, drying, roasting, pelletizing, sintering, evaporating, calcining, kiln treatment, sawing and cutting stone, heat expansion, retorting (mercury), leaching, and briquetting.

Crushing. Crushing is the process used to reduce the size of mined material into smaller, relatively coarse particles. Crushing may be done in one or more stages, usually preparatory for the sequential stage of grinding, when concentration of ore is involved.

Grinding. Grinding is the process of reducing the size of a mined product into relatively fine particles.

Pulverizing. Pulverizing is the process whereby mined products are reduced to fine particles, such as to dust or powder size.

Sizing. Sizing is the process of separating particles of mixed sizes into groups of particles all of the same size, or into groups in which particles range between maximum and minimum sizes.

Concentrating. Concentrating is the process of separating and accumulating economic minerals from gangue, or the upgrading of ore or minerals.

Washing. Washing is the process of cleaning mineral products by the buoyant action of flowing water.

Drying. Drying is the process of removing uncombined water from mineral products, ores, or concentrates, for example, by the application of heat, in air-actuated vacuum type filters, or by pressure type equipment.

Roasting. Roasting is the process of applying heat to mineral products to change their physical or chemical qualities for the purpose of improving their amenability to other milling processes.

Pelletizing. Pelletizing is the process in which finely divided material is rolled in a drum, cone, or on an inclined disk so that the particles cling together and roll up into small spherical pellets. This process is applicable to milling only when accomplished in relation to, and as an integral part of, other milling processes.

Sintering. Sintering is the process of agglomerating small particles to form larger particles, cakes or masses, usually by bringing together constituents through the application of heat at temperatures below the melting point.

This process is applicable to milling only when accomplished in relation to, and as an integral part of, other milling processes.

Evaporating. Evaporating is the process of upgrading or concentrating soluble salts from naturally occurring, or other brines, by causing uncombined water to be removed by application of solar or other heat.

Calcining. Calcining is the process of applying heat to mineral materials to upgrade them by driving off volatile chemically combined components and effecting physical changes.

This process is applicable to milling only when accomplished in relation to, and as an integral part of, other milling processes.

Kiln treatment. Kiln treatment is the process of roasting, calcining, drying, evaporating, and otherwise upgrading mineral products through the application of heat.

This process is applicable to milling only when accomplished in relation to, and as an integral part of, other milling processes.

Sawing and cutting stone. Sawing and cutting stone is the process of reducing quarried stone to smaller sizes prior to removal from the quarry, at the quarry site, and before the stone is polished, engraved, or otherwise finished to its final form.

Heat expansion. Heat expansion is a process for upgrading material by sudden heating of the substance in a rotary kiln or sinter hearth to cause the material to bloat or expand to produce a lighter material per unit of volume.

Retorting. Retorting is a process usually performed at certain mine sites, and is accomplished by heating the crushed material in a closed retort to volatilize the metal, material or hydrocarbon which is then condensed and recovered as upgraded metal, material or hydrocarbon.

[1] Preface, p.v., Handbook of Mineral Dressing, Arthur P. Taggart, Second Printing, March 1947, John Wiley and Sons, Inc.

Leaching. Leaching is the process by which a soluble metallic compound is removed from a mineral by selectively dissolving it in a suitable solvent, such as water, sulfuric acid, hydrochloric acid, cyanide, or other solvent, to make the compound amenable to further milling processes.

Briquetting. Briquetting is a process by which iron ore, or other pulverized mineral commodities, are bound together into briquettes, under pressure, with or without a binding agent, and thus made conveniently available for further processing.

MESA AUTHORITY ENDS—OSHA AUTHORITY BEGINS

The following are types of operations which may be on or contiguous to mining and/or milling operations listed above, over which MESA does not have authority to prescribe and enforce employee safety and health standards, and over which DOL has full authority, under the Act, to prescribe and enforce safety and health standards regarding working conditions of employees. These procedures are beyond milling.

Department of Labor regulatory authority commences as indicated in the following types of operations:

Gypsum board plant. Commences at the point when milling, as defined, is completed, and the gypsum and other materials are combined to enter the sequential processes necessary to produce gypsum board.

Brick plant. Commences at the point when milling, as defined, is completed, and clay and other materials are combined to enter the sequential processes to produce a fired brick product.

Ceramic plant. Commences at the point when milling, as defined, is completed, and clay and other materials are combined to enter the next sequential processes to produce a ceramic product.

Fertilizer products. Commences at the point when milling, as defined, is completed, and two or more raw materials are combined to produce another product. Note that a "kiln", as it relates to these products for roasting and rying, is considered to be within the scope of the milling definition.

Asphalt-mixing plant. Commences at the point where milling, as defined, is completed, and gravel or crushed stone and asphaltic material are combined to enter sequential processes to produce an end product.

Cement plant. Commences at the point when milling, as defined, is completed, and the raw materials are combined to enter the sequential processes to produce cement.

Concrete ready-mix or batch plants. Commences at the point when milling, as defined, is completed, and cement, aggregates and water are combined to produce concrete.

Custom stone finishing. Commences at the point when milling, as defined, is completed, and the stone is polished, engraved, or otherwise processed to obtain a finished product.

Smelting. Commences at the point where milling, as defined, is completed, and metallic ores or concentrates are blended with other materials and are thermally processed to produce metal.

Electrowinning. Commences at the point where milling, as defined, is completed, and metals are recovered by means of electrochemical processes.

Refining. Commences at the point where milling, as defined, is completed, and material enters the sequential processes to produce a product of higher purity.

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